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Clear Channel Outdoor, Inc.¹ and Painters and Allied Trades District Council 35, a/w International Union of Painters and Allied Trades, AFL-CIO, CLC. Case 1-CA-42337

June 30, 2006

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS SCHAUMBER
AND WALSH

On January 19, 2006, Administrative Law Judge George Alemán issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed a brief in support of the judge's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings,² findings,³ and conclusions and to adopt the recommended Order as modified.⁴

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Clear Channel Outdoor, Inc., Stoneham, Massachusetts, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(a).

¹ We have amended the caption to correct the name of the Respondent consistent with the record and the judge's recommended Order.

² In affirming the information request violation, Chairman Battista and Member Schaumber rely specifically on the judge's finding that both the grievance filed by the Union's business agent, Fogell, on April 23 and the phone discussion between Fogell and the Respondent's operations manager, Shay, on April 22 would have put Shay on notice that the Union needed the requested information to confirm its belief that the contract had been violated. Member Schaumber also notes that the Board's Order should not be read to require the production of confidential or proprietary information, or portions of documents that are not relevant and necessary to the processing of the Union's grievance.

³ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

⁴ We shall modify the judge's recommended Order to include the date of the Union's information request, as alleged in the complaint and as found by the judge.

"(a) Failing and refusing to furnish relevant and necessary information requested by Painters and Allied Trades District Council 35, a/w International Union Painters and Allied Trades, AFL-CIO, CLC, on July 21, 2004, relating to the subcontracting work performed at the Albany jobsite."

2. Substitute the following for paragraph 2(a).

"(a) Promptly furnish the information requested by the Union on July 21, 2004."

Dated, Washington, D.C. June 30, 2006

Robert J. Battista, Chairman

Peter C. Schaumber, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Don Firenze, Esq., for the General Counsel.

Glenn E. Plosa, Esq., for the Respondent.

Jonathan Conti, Esq., for the Charging Party.

DECISION

STATEMENT OF THE CASE

GEORGE ALEMÁN, Administrative Law Judge. This case was tried in Boston, Massachusetts, on July 19, 2005, based on a complaint issued by the Regional Director for Region 1 of the National Labor Relations Board (the Board) on April 14, 2005, alleging that Clear Channel Outdoor (the Respondent), had violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act) by failing and refusing to provide Painters and Allied Trades District Council 35, a/w International Union of Painters and Allied Trades, AFL-CIO, CLC (the Union), which is the exclusive bargaining representative of certain of its employees,¹ with information needed to perform its duties as said bargaining representative.² The Respondent, by answer dated April 26, 2005, has denied the allegation.

All parties were afforded a full and fair opportunity at the hearing to call and examine witnesses, to present oral and written evidence, to argue orally on the record, and to file post-hearing briefs. On the entire record, including my observation of the demeanor of the witnesses, and after considering briefs

¹ As set forth in a collective-bargaining agreement between the Respondent and the Union in effect from August 1, 2001-July 31, 2005, the unit of employees represented by the Union includes all of the Respondent's "Construction, Garage and Billposting employees." (see GC Exh. 2). The Union, District Council 35, is an umbrella organization comprising some 13 different locals, one of which is Local 391. The Respondent's bargaining unit employees are part of Local 391.

² The unfair labor practice charge which gave rise to the complaint was filed by the Union on January 20, 2005.

filed by the General Counsel and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a corporation with an office and place of business in Stoneham, Massachusetts, where it is engaged in the business of providing outdoor advertising.³ In the course and conduct of its business operations, the Respondent annually purchases and receives at its Stoneham facility goods valued in excess of \$50,000 directly from points outside the Commonwealth of Massachusetts. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. It further admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Factual Background

The Respondent, as noted, is in the business of leasing advertising space to advertisers on some 2200 billboards it owns throughout the greater Boston, Massachusetts area. Its operations include a real estate department which oversees the leasing arrangements with landlords of the property on which its billboard structures are located, and an operations department, managed by Gary Shay, whose employees handle the installation of the advertising on the billboards. Said operations employees include construction journeymen and billposters. The function of the billposter employees is to affix the advertising display onto the billboards in a manner similar to the installation of wallpaper. The construction journeymen also install displays but do so through the use of cranes to lift large sheets of vinyl advertising to the display billboard and secure them by strapping them down with ratchet straps.⁴

The operations department employees were represented by the Union prior to Respondent's acquisition of A.K. Media, and continued to be so represented after the acquisition, as evident by testimonial evidence presented at the hearing, and by a collective-bargaining agreement entered into between the Union and the Respondent on June 21, 2002, covering a period from August 1, 2001 to July 31, 2005 (see GC Exh. 2). Under the terms of that agreement, the Respondent agreed to recognize the Union "as the exclusive collective bargaining representative of all of its Construction, Garage and Billposting employees."⁵ It further agreed that as to said bargaining unit, "any new positions created as a result of technological changes and/or the introduction of new posting, painting and/or construction methods shall be within the . . . bargaining unit" represented by the Union. (See "Article 1-Recognition" on p. 5 of GC Exh. 2).

³ The Respondent, also known as Clear Channel Outdoor, Boston Division, is an admitted successor to A.K. Media.

⁴ The billposting work done by billposters usually requires only one employee to perform the work. Because the work done by construction employees is more difficult, the construction employees work in teams, often referred to as a "rotary crew" that might include anywhere from 3-5 employees depending on the complexity or difficulty of the job.

⁵ There were 35 unit employees as of the date of the hearing.

The parties' agreement also contains a "work preservation" clause that prohibits the subcontracting or assignment of work covered by the agreement to nonbargaining unit personnel provision except under certain special circumstances. (See art. 26 of GC Exh. 2.) One such circumstance, listed in the second paragraph of article 26, section 1(a) states that:

The COMPANY may continue to subcontract the excavation, crane work and cement work involved in the construction of one (1) and two (2) pole sign units, provided that a minimum of two (2) regular bargaining unit employees are assigned to work in composite with the subcontractor's crews and provided further that the COMPANY continues to make every effort to train its employees to perform the single and double pole work so that the work can be taken over completely by the EMPLOYER, without subcontractor involvement.

Shay testified that the work of digging the holes and pouring the cement needed to install the posts required for the construction of the billboards is always done by a subcontractor. The job of installing the poles and erecting the billboard itself is essentially bargaining unit work (Tr. 112). Further, consistent with the above provision, unit employees are generally assigned to and paid for "stand[ing] around" while the work to be done by subcontractors is being performed. (Tr. 119).

On or around April 17, the Respondent began construction of a new advertising structure or billboard on property owned by the Massachusetts Bay Transportation Authority (MBTA) on Albany St. in Boston (the Albany project). A company named Quantum, which is a division of Clear Channel Outdoor, was assigned to do the work. (Tr. 80.) According to Shay, the work of drilling the holes in the ground for installation of the billboard poles, and the pouring of cement, was subcontracted out by Quantum to a firm in Tennessee known as Gerald R. Page. (Tr. 99.) Shay admits that no unit employees were assigned to do "stand around" work at the Albany project because he "couldn't spare the guys at the time." He explained that he had "other jobs and client needs" and that, if he had sent unit employees "to just stand there," his other jobs would suffer and result in delays.

Union Business Representative Charles Fogell testified to receiving a call on April 22, from Union member Ronny Jones informing him of the Albany project, and of not seeing any of the Respondent's unit employees at the jobsite. On receipt of this information, Fogell asked Union Business Agent Bill Doherty to visit the site. When Doherty reported back that he had gone to the site and not recognized any of the employees working on the project, Fogell called Shay to find out what was going on. (Tr. 20.) Fogell testified that in his phone conversation with Shay, the latter told him that Quantum was doing the work. Fogell asked what Quantum was doing there, that Respondent's unit employees typically performed such work, and that the Respondent was engaging in the subcontracting out of unit work.

Shay, according to Fogell, denied that the work was being subcontracted out, and told Fogell that the employees performing the work were "Clear Channel" employees. Fogell replied that regardless of whether or not the employees doing the work at the Albany jobsite were "Clear Channel" employees, they

nevertheless were not covered by the collective-bargaining agreement, that such work was typically done by bargaining unit employees, that the situation was not a good one, and that the employees working at the site would have to leave.⁶ Fogell threatened to file a grievance over the matter, stating that he wanted his “guys” on the Albany jobsite, and that the Union had been damaged by Respondent’s conduct. Shay purportedly told Fogell that he would have to discuss the matter with Respondent’s president, Drew Hoffman, and would get back to him. He contends that Shay called him later that day and informed him that the persons working on the job were being pulled off and that unit employees were being assigned to do the work. Unit employees were in fact put on the job soon thereafter and continued working on the project for another several days until completed.

Shay testified that construction on the Albany project began on or around April 17, and recalls speaking by cell phone with Fogell on April 22, regarding the work being done at that site. Fogell, he contends, asked him during that conversation if there were any unit employees working at the site, and Shay responded there were none. When Fogell asked why, Shay replied that all the unit employees were “very busy,” that he had them doing other work, and that the persons doing the work at the Albany site were needed because he had deadlines to meet and because the clients needed the sign up by a certain date. Shay recalls Fogell stating that he wanted the nonunit employees removed from the Albany project right away because the Respondent’s bargaining unit employees were the ones who should be doing the work. He contends that Fogell threatened to put up a picket line if unit employees were not assigned to the project. (Tr. 82–84.) On hearing this, Shay agreed to pull the nonunit workers off the job and to assign only unit employees to the site. Fogell in response agreed not to set up a picket line at the jobsite.

On April 23, the day after his phone conversation with Shay, Fogell filed a grievance over the subcontracting work at the Albany project. Thus, by letter to Hoffman dated April 23, Fogell advised that the Union wanted to proceed to Step 2 of the grievance procedure. (GC Exh. 3.) In his letter, Fogell states that the “alleged violation of the Agreement is that the Company has subcontracted work that is normally performed by bargaining unit employees, i.e., the installation of a new billboard” at the Albany project “by a company called Quantum.”

On July 21, the parties held a step 2 grievance meeting, attended by Fogell and Doherty for the Union, and Shay and staff accountant Koren Marsolais for the Respondent. At this meeting, the parties exchanged accusations, with the Union accusing the Respondent of violating the “work preservation” clause of their agreement, and the Respondent accusing the Union of violating the contract’s “no strike-no lockout” provision. When Fogell asked why unit employees had not been assigned to the

Albany project, Shay, as he did during their earlier April 22, phone conversation, reiterated that the unit employees were too busy on other projects and that the Respondent “couldn’t afford to put another crew” at the site (Tr. 90). Fogell recalls Shay telling him that the Respondent had subcontracted out the work at the Albany project “because of client requirements and safety concerns.” Fogell claims that at this meeting, he sought certain information regarding the Albany project work, such as who were the employees doing the work and how long they had been there, how they came to be hired, whether they were hired by Clear Channel, or whether there were work orders or invoices containing such information, or payroll records available for said employees.

Shay recalls attending this meeting and Fogell asking him who was doing the work at the Albany project. Shay identified Quantum as the subcontractor. He admits that, in response to Fogell’s question as to why unit employees were not assigned to the project, he told Fogell that the unit employees were too busy on other projects and that the Respondent simply could not afford to put another crew on the site. He contends he further explained to Fogell that this particular billboard construction project was unique and that the Respondent had not constructed any like it in the past. Shay conceded, however, that unit employees have engaged in the actual construction of billboards but that this particular work was somehow different from prior projects.⁷ According to Shay, while the subcontracted employees performed the job of digging the holes and building the cement caissons, the remaining work of constructing the billboard itself was done by unit employees.⁸ It is un-

⁷ The billboard constructed at the Albany site was “vertical” in style, that is, it was taller in size and narrower in width than other billboards constructed by the Respondent in the past, which were horizontally wider but vertically shorter than the Albany billboard. It is unclear from the record whether the subcontracted employees were being used only to dig the holes and build the cement caissons, or whether they had been retained to do the entire project, including erecting or putting up the actual “vertical” billboard. Shay, for example, never claimed that the subcontractor’s work was limited to the hole digging and cement caisson building operation. In fact, his description of the “vertical” billboard at the Albany jobsite as unique, and his assertion that unit employees had never before erected a billboard like the one at the Albany project, leads me to suspect that the Respondent’s intent, until objected to by Fogell, was to have all the work at the Albany site, including the digging of holes, construction of the cement caissons, and the actual erection of the “vertical” billboard itself, performed by the subcontracted nonunit employees.

⁸ Shay testified that following his April 22 conversation with Fogell, he spoke with Jim Carlson, a Gerald R. Page supervisor on the jobsite, to find out how much work had already been done at the site. Carlson purportedly told him that “a pipe” had already been installed and “cemented” into the ground. (Tr. 105.) It is unclear just how many “pipes” had to be installed and cemented into the ground before the construction of the billboard itself could proceed. Nor, for that matter, is it clear if the pipe referenced by Carlson was a pole of the kind generally installed by unit employees as part of their bargaining unit work. Shay’s testimony, however, that the subcontracted employees completed the installation of the pipes and the caissons and that the unit employees built the billboard, suggests that all the work that needed to be done before erection of the billboard itself could begin was more or

⁶ Fogell explained that his Union did not have a nationwide agreement with Clear Channel and only represented employees at the Clear Channel facility in Massachusetts, and the fact that the persons on the job may have been employed by Clear Channel did not render them unit employees or covered by the parties’ agreement.

clear from his testimony, however, if Shay mentioned this fact to Fogell. Shay recalls that, during this meeting, Fogell asked if the Respondent had payroll records “and stuff like that” for the persons who had worked at that project, because he was going to ask for their production. Shay denied that Fogell gave him a reason for wanting to see the payroll records and other related information. Although Shay testified that he did not know whose payroll records the Union was seeking, nothing in his testimony suggests that he ever asked Fogell for clarification.

Called to corroborate Shay’s account of the July 21, meeting, Marsolais testified she was asked by Hoffman to attend, and take minutes of, the meeting. She recalls that the purpose of the meeting was to discuss the subcontracting work at the Albany project. Marsolais contends that at the meeting, Fogell asked who was doing the work at the Albany project, and that Shay responded that it was people working through Quantum (Tr. 124). She recalls Shay then went on to describe the work done by Quantum at the Albany project, stating that while the Quantum employees drilled the holes and installed the posts and cement footings or “caissons” for the billboard, unit employees “put up the rest of the sign.” Asked if Fogell ever requested anything at that meeting, Marsolais replied, “No, he didn’t.” Her testimony in this regard, however, is somewhat at odds with Shay’s own recollection of Fogell stating at the meeting that he would be seeking “payroll records and stuff like that” from the Respondent.⁹ She did recall Fogell asking Shay if the Respondent had provided MBTA with “certified payroll records” and Shay replied that he did not know. Marsolais further recalled Shay explaining to Fogell that the reason why certain work at the Albany project was not done by unit employees was because of “safety and because we had to meet a deadline for them putting something up on the board.” (Tr. 128.) Marsolais made no mention of hearing Shay tell Fogell that all unit employees were too busy with other client needs.

Having received none of the information requested at the second step grievance meeting, Fogell wrote to Shay on October 5, asking that the Respondent provide him with “copies of certified payroll records, invoices, work orders or other supporting documentation for the work performed” at the Albany project “in order to process our grievance to step 3.” (GC Exh. 7.) At the hearing, Fogell explained that he asked for the certified payroll records because they would show who performed the work, how many people were involved, and how many hours were worked by these employees at that jobsite. Such information, he further explained, would help determine the potential damage that had been done to the Union by having other nonunit individuals performing the work. He further testified that the information was needed to process the grievance.

less completed by the time Fogell called him on April 22, to inquire about the project.

⁹ The Respondent’s assertion, on brief (p. 4), that Fogell made a request at the July 21, 2004 meeting for “certified payroll records” and “invoices,” further undermines Marsolais’ claim that no such request was made by Fogell at that meeting.

As to his request for invoices, Fogell explained that he requested this information in case the payroll records he asked for on the individuals who worked on the project were not available. This information, he contends, would reflect how much had been paid to another company to do the work that should have been done by unit members, and would aid the Union in the processing of the grievance as it would help determine the amount of damages suffered due to the loss of work and opportunities experienced by unit employees at the Albany project.

Fogell explained that he requested copies of any existing work orders regarding the Albany project because he was initially told that the individuals working at that project were Clear Channel employees. However, had the individuals actually been working for Quantum, there would have been work orders issued to Quantum reflecting how much time had been allocated to putting up the sign. Shay’s testimony, that he faxed the work order on the Albany project to Quantum, makes patently clear that a work order was indeed prepared, and that the original work order was retained by Shay. The record further makes clear, and the Respondent does not deny, that Fogell was never provided with the information requested on July 21, or October 5, nor given a reason or explanation for its nonproduction.

Discussion

The complaint alleges, and the General Counsel contends, that the Respondent’s failure and refusal to comply with the Union’s July 21, information request was unlawful. The Respondent at the hearing, and on brief, argues that it has no obligation to provide the Union with the requested information because the information sought pertaining to the subcontracting of work at the Albany project is unrelated to the unit employees, and the Union has not demonstrated the relevancy of that information to its role as the exclusive bargaining representative of the unit employees.¹⁰ I find merit in the allegation.

The information being sought here by the Union, as noted, relates to the subcontracting work performed at the Albany project. The Board has held that information regarding subcontracting is generally not presumptively relevant to a union seeking such information. *SBC Midwest*, 346 NLRB No. 8 (2005); *Ingham Regional Medical Center*, 342 NLRB 1259 (2004); *Garcia Trucking Service*, 342 NLRB 764 (2004); *Quality Building Contractors, Inc.*, 342 NLRB 429 (2004). The Board has also held, however, that information relating to subcontracting which impacts the working conditions of unit employees is indeed relevant. *SBC Midwest*, supra, *Garcia Trucking Service*, supra at 767.

The record here makes patently clear that Fogell’s purpose in seeking from the Respondent all “certified payroll records, invoices, and work orders” relating to the Albany project was to ascertain whether the Respondent had violated or was violating its collective-bargaining agreement with the Union by subcontracting out the work at that site to nonunit employees, rather than assigning it to bargaining unit employees. As noted, the Albany project got under way on or around April 17. However,

¹⁰ The Respondent has not contended, nor was any evidence produced to show, that the information sought by the Union raised privacy, confidentiality, or proprietary concerns that prevented its disclosure.

as of April 22, no unit employees, as Shay readily admitted to Fogell that day, had been put to work on the Albany project because, as claimed by Shay, they were “too busy” working on other projects. Further, while the evidence shows that the Respondent had assigned the work at the Albany project to a Clear Channel affiliate, Quantum, who in turn apparently subcontracted at least some of the work (digging holes and installing cement caissons) to subcontractor Gerald R. Page, Shay nevertheless told Fogell during their April 22, conversation, misleadingly in my view, that the work had not been subcontracted out.¹¹

Several factors would reasonably have led Fogell to believe that the Respondent was violating its collective-bargaining agreement with the Union by assigning the Albany project work to nonunit employees. There is, first of all, Shay’s admission to Fogell on April 22, that unit employees were not assigned that work because they were too busy working on other projects. Shay never challenged Fogell’s assertion during that conversation that the work at the Albany site was work that bargaining unit employees should be doing. Clearly, if, as he suggested in his testimony, the work at the Albany project was not bargaining unit work or of the type not previously performed by unit employees, or if he believed that the work was too dangerous for unit employees to perform, Shay, I am convinced, would or should have made these facts known to Fogell during their April 22, conversation in response to Fogell’s assertion that the work at the Albany site properly belonged to unit employees. Instead, Shay, as noted, simply explained that unit employees were too busy elsewhere to be assigned to work on the Albany project, or, for that matter, to be assigned to the project as “stand around” employees. In short, Shay never asserted to Fogell that unit employees were incapable of doing the work required at the Albany project, including the digging of the holes or the building of the cement caissons, nor did he question the ability of the unit employees to operate the equipment necessary for the performance of such work. Shay’s actions, soon after his conversation with Fogell, in replacing the nonunit employees at the Albany project with bargaining unit employees, after being asked to do so by Fogell, together with his explanation for why unit employees were not assigned to the Albany project, and his failure to dispute or deny Fogell’s claim that the Albany project work was bargaining unit work, would reasonably have convinced Fogell that the Respondent had improperly subcontracted out bargaining unit work at the Albany project in derogation of its collective bargaining agreement.

If, as Fogell reasonably suspected, the Respondent had subcontracted bargaining unit work to nonunit employees at the Albany project in contravention of its collective bargaining agreement, its actions would have adversely affected the unit employees’ working conditions as the subcontracting would have effectively deprived them of work to which they would otherwise have been entitled. The information sought by the Union relating to the subcontracted work at the Albany project

was, therefore, relevant and necessary to the Union in determining whether the subcontracting arrangement entered into between the Respondent and Quantum amounted to a violation of the collective-bargaining agreement.

Even if, as asserted by Shay, the actual construction of the billboard at the Albany site was completed by unit employees, it is not clear that, but for Fogell’s learning from Ronny Jones that no unit employees were employed at the Albany project, and Fogell’s insistence that unit employees be assigned to the project immediately, unit employees would have been assigned to do such work. As previously pointed out (see fn. 7 *supra*), there is strong reason to believe, from Shay’s admission that unit employees were too busy elsewhere to be assigned to the Albany site, and his further assertion that the Respondent could not afford to have another team on the site, that it was the Respondent’s intent to have all the work that needed to be done at the Albany project, from the digging of the holes and construction of the cement caissons, to the construction or erection of the actual billboard itself. Support for this proposition can be also gleaned from Shay’s claim that on April 22, soon after Fogell demanded that unit employees be put to work on the Albany project, he directed the Gerald R. Page’s supervisor Carson “to stop what he’s doing” because he had to “send my guys down there to start working on the job.” There would have been no need for Shay to direct Carson to cease working on the project if the work of digging the holes and building the cement caissons had already been completed, and the only work left to be done at the project was the construction of the billboard itself.

Under article 26, section 1(a) of the parties’ agreement, the work of digging the holes and installing cement caissons in billboard construction projects could arguably be viewed as work that the Respondent was free to subcontract out. The actual construction of the billboard itself, however, was clearly bargaining unit work. As noted, however, it is not clear that the Respondent ever intended for the unit employees to be engaged in the Albany project, either as “stand around” employees as required by the “work preservation” clause of the parties’ agreement, or to construct the billboard. That the Respondent, following Fogell’s April 22, protest to Shay, relented and agreed to assign unit employees to the project does not alter the fact that, but for Fogell’s demand, all work at that site, including the construction and erection of the billboard, arguably bargaining unit work, might very have been completed by the subcontracted employees. In these circumstances, the Union was fully justified in asking the Respondent to provide it with the subcontracting information relating to the Albany project, as such information would help the Union determine if, in conjunction with its subcontracting out of the “hole digging” and “cement caisson” installation aspect of the project, the Respondent also subcontracted out the work of erecting the billboard itself.¹²

¹¹ Fogell so testified. In his version of the April 22, phone conversation, Shay did not deny telling Fogell that the work at the Albany project had not been subcontracted. Accordingly, I credit Fogell.

¹² Contrary to the Respondent’s assertion on brief (R. Br. 10), a finding that the information sought is relevant does not require the General Counsel to show that the subcontracting provision of the parties’ collective-bargaining agreement had been violated. Rather, the Board applies a broad discovery-type standard for determining what information is

The Respondent does not deny, and indeed concedes on brief, that Fogell made a request for information at the July 21, grievance meeting. It contends, however, that at no time prior to the hearing did the Union provide it with a reason for wanting the information, and that it was not until the July 19, 2005, hearing that the Union, through Fogell, explained that the information was needed "to see what the potential damage was done to the union by having other people perform this work." Current Board law provides that a union requesting information "need not inform the . . . employer of the factual basis for its requests, but need only indicate the reason for its request." *Pulaski Construction*, supra, slip op. at 2, *Contract Flooring*, supra, slip op. at 1. When, however, the circumstances surrounding the request are reasonably calculated to put the employer on notice of a relevant purpose which the union has not specifically spelled out, the employer is obligated to divulge the requested information. *Allison Corp.*, 330 NLRB 1363, 1370 (2000); *Brazos Electric Power*, 241 NLRB 1016, 1018 (1979).

Assuming, arguendo, that Fogell never expressly told Shay during their July 21, grievance meeting why the Union needed certified copies of payroll records, invoices, work orders pertaining to the Albany project, both the grievance filed by Fogell on April 23, accusing the Respondent of violating its collective-bargaining agreement by subcontracting out bargaining unit work, and the phone discussion between Fogell and Shay the day before the grievance was filed, in which Fogell complained about the Respondent's assignment of bargaining unit work at the Albany project to nonunit employees, would clearly and unequivocally have put Shay on notice that the Union needed the information to confirm its belief that the contract had been violated. Further, as evident from his October 4, 2004 letter to Shay reiterating his demand for the information requested during their July 21, step 2 grievance meeting, Fogell made clear that the Union needed the information to process its grievance. The Respondent's assertion, therefore, that at no time prior to the hearing did the Union say why it needed the information, is patently false and without merit.

Despite evidence showing that Shay would reasonably have known, from the circumstances surrounding the information request, why the Union wanted the information, and that Fogell, on two occasions, e.g., in his October 5, letter, and at the July 19, 2005, hearing in this case, explained why the Union needed the information, the Respondent has, to date, refused to comply with the Union's information request. I find that the Union has met its burden of demonstrating the relevance of the requested information. By refusing to provide the Union with the requested information, the Respondent, I find,

relevant. Under this standard, the Union need demonstrate only a "probability that the desired information is relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities." *Pulaski Construction Co.*, 345 NLRB No. 66, slip op. at 6 (2005); *Contract Flooring Systems*, 344 NLRB No. 117, slip op. at 4 (2005). Thus, as noted in *Pulaski Construction*, supra, slip op. 5-6, "the Board does not pass on the merits of a union's claim of breach of a collective bargaining agreement in determining whether information [sought] is relevant."

has violated, and is continuing to violate, Section 8(a)(5) and (1) of the Act, as alleged.¹³

CONCLUSION OF LAW

By failing and refusing, since July 21, 2004, to provide the Union with copies of certified payroll records, invoices, work orders or other supporting documentation for the work performed at its Albany, project, which information is relevant to and necessary for the Union to perform its duties as exclusive bargaining representative of its unit employees, the Respondent has engaged in an unfair labor practice affecting commerce within the meaning of Section 8(a)(1) and (5), and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

To remedy its unlawful conduct, the Respondent shall be required to provide the Union with copies of certified payroll records, invoices, work orders or other supporting documentation relating to the subcontracting work performed at its Albany, project, as requested by the Union on July 21, and again on October 5, 2004.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁴

ORDER

The Respondent, Clear Channel Outdoor, Inc., Stoneham, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to furnish relevant and necessary information requested by Painters and Allied Trades District Council 35, a/w International Union of Painters and Allied Trades, AFL-CIO, CLC, on July 21, and October 5, 2004, relating to the subcontracting work performed at the Albany job-site.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary, to effectuate the policies of the Act.

¹³ I find no merit to the Respondent's affirmative defense in its answer that the matter is barred under Section 10(b). The 6-month limitations period under 10(b) period for the filing of charge begins to run when an employer clearly and unequivocally denies a union's information request. *Quality Building Contractors*, 342 NLRB 429 (2004). The Union's request for information was made on July 21, and the Respondent has, since that date and continuing to date, refused to provide the Union with the information requested. Both the Union's information request, and the Respondent's refusal to comply therewith, therefore fall squarely within the 6-month statutory period.

¹⁴ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(a) Promptly furnish the Union with the information found to have been unlawfully withheld as set forth in the remedy section of this decision.

(b) Within 14 days after service by the Region, post at its facility in Stoneham, Massachusetts, copies of the attached notice marked "Appendix."¹⁵ Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 21, 2004.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. January 19, 2006

¹⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively with the Union, Painters and Allied Trades District Council 35, a/w International Union of Painters and Allied Trades, AFL-CIO, CLC, by failing and refusing to provide requested information that is relevant and necessary to it as the collective-bargaining representative of our employees in the appropriate unit as defined in the collective-bargaining agreement between the Union and Clear Channel Outdoor, Inc., and WE WILL promptly furnish the information requested by the Union on July 21, 2004.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

CLEAR CHANNEL OUTDOOR, INC.